

Tuesday, December 18, 2018

Secretary Michael R. Pompeo
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D. C. 20522-0208

FREEDOM OF INFORMATION ACT REQUEST

Please find under this cover our request under the Freedom of Information Act.

Exhibit "B"

Tuesday, December 18, 2018

VIA FACSIMILE (202-261-8579)

Secretary Michael R. Pompeo
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D. C. 20522-0208

FREEDOM OF INFORMATION ACT REQUEST

Dear Secretary Pompeo and Department of State:

This is a request for public records and information under the Freedom of Information Act.

Records Requested

The records we request can be described as follows:

- 1) For the period of July 1, 2018, through and inclusive of December 17, 2018, all public records and information that contain one or more of the following subjects:
 - 3-D printable gun blueprints; 3D printing; plastic firearms; firearm printing files; firearm machining files; “ghost guns”.
- 2) For the period of July 1, 2018, through and inclusive of December 17, 2018, all public records and information that contain one or more of the following subjects:
 - “Defense Distributed”; “Cody Wilson”; “Code is Free Speech”; “CodeIsFreeSpeech.com”; “Brandon Combs”; “Firearms Policy Coalition”; “Firearms Policy Foundation”; “The Calguns Foundation”; “Gene Hoffman”; “California Association of Federal Firearms Licensees”.

As noted, the time period of our request is from July 1, 2018, to and through December 17, 2018.

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Request for Expedited Handling

We request that this request be taken out of order and given expedited treatment for the following reasons:

- 1) This Request seeks records that are matters of important public debate and concern, including rights guaranteed under the United States Constitution.
- 2) A related prior Freedom of Information Act Request dated and submitted to you electronically on August 22, 2018 (enclosed as Attachment A) was never responded to, and thus the Requestors in that Request were denied access to and copies of important public records sought again here.
- 3) The information is urgently needed by institutions engaged in publicizing information in order to inform the public concerning actual or alleged government activity. Specifically, there appears to be a connection between some government actors – including some States and state actors, as well as members of Congress – as well as large Internet communications and infrastructure platforms in an effort to chill or impose severe restrictions on speech and civil rights. *See, e.g.*, the following:
 - Attachment B: E-mail showing correspondence between various States and state actors and the Department of State [via counsel Stuart J. Robinson] regarding many of the subjects of this Request, filed on Dec. 4, 2018 in *Def. Dist., et al. v. Grewal, et al.*, U.S. Dist. Tex. (Western Div.) no. 1:18-cv-00637-RP (Doc. 65 Exhibit 28), online at <http://bit.ly/2zVVVFQ>
 - “[U.S. Senator] Menendez Calls on Secretary Pompeo to Stop Online Posting of Do-it-Yourself, 3-D Printable Gun Blueprints”, online at <http://bit.ly/2RWcBnB>
 - “[U.S.] Senators Urge Tech Companies To Remove 3-D Gun Plans from Platforms”, online at <http://bit.ly/2SJde43>
 - “Gun-Rights Activists Who Posted Gun Files Say Facebook, Amazon Have Censored Their Site”, online at <http://bit.ly/2Lk5Cm8>

The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

Thus, a “compelling need” exists and the Department should grant our request for expedited handling.

Request for Fee Waiver

We request a waiver of all fees for this request. We believe we meet the criteria for a fee waiver. (*See Project on Military Procurement v. Department of the Navy*, 710 F. Supp. 362 363, 365 (D.C.D. 1989). The information sought has informative value, or potential for contribution to public understanding. (*See Elizabeth Eudey v. Central Intelligence Agency*, 478 F. Supp. 1175 1176 (D.C.D. 1979) (even a single document has the potential for contributing to public understanding)).

Disclosing to us the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in our commercial interest. (*See* 5 U.S.C. § 552(a)(4)(A)(iii).)

Our request concerns the operations or activities of government because the subjects of the records requested relate to matters of public interest, rulemaking, and litigation efforts by States and state actors to chill and suppress rights guaranteed by the United States Constitution.

Additionally, the release of this information will have a significant impact on public understanding because some States and state actors have withheld similar records under their respective state's public records laws.

We plan to disseminate this information to the public at large on our publicly-accessible Web sites, in videos, in e-mails, and on social media, which collectively reach millions of Americans. We also plan to provide the records requested to news media.

Please note that nonprofit public interest organizations, such as clearinghouses of information, can qualify as a representative of the news media. (*See National Security Archive v. U.S. Department of Defense*, 279 U.S. App. D.C. 308 (D.C. 1989).) Firearms Policy Foundation is a 501(c)3 nonprofit public interest organization that conducts research and publishes information for news and public use.

If our request for a fee waiver is denied, please note that 5 U.S.C. § 552(a)(4)(A)(iv)(II) requires that you provide the first 100 copies to me at no charge.

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Requestors

The requesters are: Mr. Brandon Combs, individually and on behalf of:

- Firearms Policy Foundation
- Firearms Policy Coalition
- The Calguns Foundation
- California Association of Federal Firearms Licensees
- CodeIsFreeSpeech.com

Requesters' Contact Information

We prefer to communicate via e-mail at policy@fpchq.org. However, should it be necessary, you may reach the requestors at the following:

4212 N. Freeway Boulevard, Suite 6
Sacramento, California 95834
Phone: (916) 378-5785
E-mail: policy@fpchq.org

* * *

Thank you for your assistance with this Request.

Please do not hesitate to contact us if you have any questions or wish to coordinate on the fulfillment of this Request.

Attachments

ATTACHMENT A

On Wed, Aug 22, 2018 at 9:48 AM PDT, State Department Foia <noreply@mail.foia.state.gov> wrote:

Thank you for filing your FOIA request online on 8/22/2018. Here is a review of your request.

The records I request can be described as follows:

1) For the period of July 1, 2018, through and inclusive of August 21, 2018, all public records and information that contain one or more of the following subjects: 3-D printable gun blueprints; 3D printing; plastic firearms; firearm printing files; firearm machining files; "ghost guns". 2) For the period of July 1, 2018, through and inclusive of August 21, 2018, all public records and information that contain one or more of the following subjects: "Defense Distributed"; "Cody Wilson"; "Code is Free Speech"; "CodeIsFreeSpeech.com"; "Brandon Combs"; "Firearms Policy Coalition"; "Firearms Policy Foundation"; "The Calguns Foundation"; "California Association of Federal Firearms Licensees". Please note that we do not seek publicly-available court documents that were not filed under seal. Thank you for your consideration of this request. Requestors: Brandon Combs, individually and on behalf of Firearms Policy Coalition Firearms Policy Foundation The Calguns Foundation California Association of Federal Firearms Licensees

The time period of my request is from 07/01/2018 to 08/21/2018

I am affiliated with an educational or noncommercial scientific institution seeking information for a scholarly or scientific purpose and not for commercial use.
Additional documentation will be required.

I am willing to pay \$500 for my request.

I request a waiver of all fees for this request.

Reason: We respectfully request a waiver of all fees for this request. Disclosure of the requested information to us is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in any commercial interest.

I have a compelling need for expeditious handling:

- An urgency to inform the public concerning actual or alleged Federal Government activity exists.

This option available for ONLY PERSONS PRIMARILY ENGAGED IN DISSEMINATING INFORMATION.

- Matters of important public debate and concern, including Constitutional rights. The information is urgently needed by institutions engaged in publicizing information in order to inform the public concerning actual or alleged government activity. Specifically, there appears to be a connection between some government actors (including members of Congress) and large Internet communications and infrastructure platforms in an effort to chill or impose severe restrictions on speech and civil rights. See, e.g., the following for background: A) "[U.S. Senator] Menendez Calls on Secretary Pompeo to Stop Online Posting of Do-it-Yourself, 3-D Printable Gun Blueprints", online at <https://www.menendez.senate.gov/news-and->

events/press/menendez-calls-on-secretary-pompeo-to-stop-online-posting-of-do-it-yourself-3-d-printable-gun-blueprints B) "[U.S.] Senators Urge Tech Companies To Remove 3-D Gun Plans from Platforms", online at <https://www.feinstein.senate.gov/public/index.cfm/press-releases?id=F88582CA-30FE-48C7-A463-EE66E816E7BE> C) "Gun-Rights Activists Who Posted Gun Files Say Facebook, Amazon Have Censored Their Site", online at <https://freebeacon.com/issues/gun-rights-activists-posted-gun-files-say-facebook-amazon-censored-site/>

My additional comments are as follows:

In order to help to determine our status to assess fees, you should know that the institutional requestors are nonprofit organizations that defend the Constitution of the United States, especially the fundamental, individual Second Amendment right to keep and bear arms, through advocacy, legal action, research, education, and outreach. Firearms Policy Coalition operates FPC News, which includes publications and video programming to educate and inform people of issues and news important to the public. This request is made as part of research and news gathering and not for a commercial use.

Contact Information

Mr. Brandon Combs

4212 N. Freeway Blvd. Suite 6

Sacramento, California 95834

P: N/A

F: N/A

policy@fpchq.org

ATTACHMENT B

Battles, Benjamin

From: Bowers, Todd (ATG) <ToddB@ATG.WA.GOV>
Sent: Thursday, August 2, 2018 8:36 PM
To: Aaron Goldstein; Abigail Wood; Al Gilbert; Andy Saindon; Bart DeLone; Beneski, Kristin (ATG); Battles, Benjamin; Cynthia Hudson; Dana Viola; Eleanor Blume; Elizabeth Wilkins; Eric Haren; Eric Tabor; Henry Kantor; Jacob Campion; Jeff Dunlap; Jennifer Thomson (jthomson@attorneygeneral.gov); Jeremy Feigenbaum; Jerry Coyne; Jimmy Rock; Joanna Lydgate; Jon Miller; Jonathan Goldman; Jones, Zach (ATG); Joseph Rubin; Diamond, Joshua; Kelli Evans; Kim Berger; Kim Massicotte; Laura Stuber; Lauren Sulcove; Mark Beckington; Matt Grove; Maura Murphy Osborne; Michael Field; Nelson Richards; Robyn Bender; Rupert, Jeffrey (ATG); Sam Towell; Scott Kaplan; Sprung, Jeff (ATG); Sripriya Narasimhan; Steven Wu; Williams, Jennah (ATG); Yael Shavit
Subject: FW: State of Washington, et al. v. U.S. Department of State, et al., No. 2:18-cv-1115 (W.D. Wash.)

Apologies for those for whom this will be redundant, but resending as we've just added a number of states. Want to make sure everyone is looped in. Thx.

From: Miller, Jonathan (AGO) <jonathan.miller@state.ma.us>
Sent: Thursday, August 2, 2018 5:29 PM
To: stuart.j.robinson@usdoj.gov
Cc: Sprung, Jeff (ATG) <JeffS2@ATG.WA.GOV>; Bowers, Todd (ATG) <ToddB@ATG.WA.GOV>; Lydgate, Joanna (AGO) <joanna.lydgate@state.ma.us>; Rupert, Jeffrey (ATG) <JeffreyR2@ATG.WA.GOV>; Beneski, Kristin (ATG) <KristinB1@ATG.WA.GOV>; eric.soskin@usdoj.gov
Subject: State of Washington, et al. v. U.S. Department of State, et al., No. 2:18-cv-1115 (W.D. Wash.)

Dear Stuart,

I am writing to follow up your correspondence with Washington's Assistant Attorney General Jeff Sprung dated August 2, 2018.

Following the issuance of a Temporary Restraining Order by the U.S. District Court on Tuesday, the technical data that Defense Distributed had posted on its affiliated websites following its settlement with the Department of State were removed. However, in connection with their removal from the Defense Distributed websites, these files have started to appear on numerous other websites that are easily accessible to the public.

Among the websites on which we have seen these files are: codeisfreespeech.com, fosscad.org, grabcad.com, and free3d.com, and we believe that these items have been posted in a publicly accessible DropBox file, too. Without a doubt, there are other websites that are currently hosting these files, making them available to individuals who cannot lawfully purchase or obtain a firearm in the United States. The Department of State has the authority, and we believe the obligation, to take action to ensure that these data are removed from the internet immediately.

As you know, the distribution, transfer, or offering of access to these technical materials is restricted under Category I of the United States Munitions List (USML) and the International Traffic in Arms Regulations (ITAR). This includes all CAD files or other technical instruction to manufacture three-dimensional (3D) firearms or gun-related parts (including triggers, grips, barrels, receivers, magazines, or munitions) using commercially available 3D printers or computer-numerically-controlled machines. Pursuant to Section 127.1 of ITAR, 22 C.F.R. § 127.1, it is unlawful to grant access to or otherwise disseminate technical data to manufacture or modify any USML Category I defense articles without prior

authorization from the Directorate of Defense Trade Controls. The files previously posted by Defense Distributed remain covered by the USML as a result of the District Court's Temporary Restraining Order.

We ask that the Department of State take immediate steps to ensure compliance with the Arms Export Control Act and ITAR. It is an urgent matter affecting the public safety of all Americans. By no later than 2 p.m. PDT tomorrow (Friday), please advise of what steps the Department of State has taken to address these concerns. Should you have any questions, please do not hesitate to contact me or my colleagues.

Sincerely,

Jonathan B. Miller

Chief, Public Protection and Advocacy Bureau

Office of Massachusetts Attorney General Maura Healey

One Ashburton Place

Boston, MA 02108

617-963-2073 (office)

617-571-5349 (cell)

Jonathan.Miller@state.ma.us

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